
(2017) 02 MP CK 0214
In the Madhya Pradesh High Court
Case No : 874-2013

Kurvan Mohmmmed

APPELLANT

Vs

Smt. Anjumani & Another

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 397,
Section 394 - Robbery or dacoity, with attempt to cause
death or grievous hurt - Voluntarily causing hurt in committing robbery
Arms Ac

Citation : (2017) 02 MP CK 0214

Hon'ble Judges : J. P. Gupta

Bench : Single Bench

Judgement

1. This jail appeal has been filed against the impugned judgment of conviction and sentence dated 7.11.2012 passed by V Addl. Sessions Judge, (Daikaiti & Vyapahan Prabhavit Kshetra Adhiniyam) Satna, in Special Sessions Trial No.27/2011, whereby the appellant has been convicted for the offence punishable under sections 394 of the I.P.C. and sentenced to R.I. for 7 years and fine of Rs.1,000/-, under Section 394/397 of the IPC read with Section 11/13 of the M.P. Dakaiti & Vyapahan Prabhavit Kshetra Adhiniyam, 1981 and sentenced to R.I. for 7 years. He has further convicted under Section 13A & 11 of the M.P. Dakaiti & Vyapahan Prabhavit Kshetra Adhiniyam, 1981 and sentenced to R.I. for 3 years and fine of Rs.1000/-, with default stipulation.

2. In brief the relevant facts of the case are that on 30.9.2008 nearabout 5.30 p.m. when complainant Yogendra Mishra was going on the motorcycle, two persons followed him by motorcycle and after overtaking, they stopped the complainant. The person, who was sitting as a pillion rider, got down from the motorcycle and fired a gunshot on the complainant and snatched his bag containing Rs. 15,000/-. Thereafter, both the persons fled away on the motorcycle. At that time one Dilip Singh who was passing through the way, took the injured complainant to the hospital and informed the Police Station Singpur

District Satna about the incident. The police registered the offence vide Crime No.120/08 under Sections 394, 397 of the IPC against unknown persons. During investigation, plain soil and blood stained soil was seized and one used cartridge was recovered from the spot. The appellant was arrested on 30.7.2011 and on the basis of information given by him, one fire arm pistol with two live cartridges were recovered and the seized. The articles were sent to the FSL, Sagar. As per the FSL report, the cartridge found at the spot was fired by the pistol recovered on the information given by the accused and the appellant also informed the Police that he committed the offence with the connivance of co-accused Satyendra Singh @ Rajesh.

3. After investigation, charge-sheet was filed before the Court of Special Judge. The learned court below framed the charge against the appellant and co-accused abjured the guilt. Therefore, the appellant and the co-accused were tried for the offence, as mentioned here-in-above and by impugned order, coaccused have been acquitted of the charge levelled against him whereas the appellant was convicted of the charge levelled against him and sentenced, as mentioned above. Appellant is in custody since 2.8.2011 and suffering his jail sentence.

4. In this case, on behalf of the Legal Services Authority, services of an Advocate have been provided; but, today he did not appear. Looking to the pendency of the appeal and appellant's period of custody in this case, this appeal is being disposed of by this Court on merits after going through the record.

5. On perusal of the record, it is found that the appellant has been convicted for the offence only on the basis of recovery of used cartridge from the spot which is referred in the FSL report as Article EC-1 and recovery of pistol, Article A-1 on the information given by the appellant/accused and the report of the FSL. But learned trial Court has failed to appreciate the fact that the recovery of Article EC-1, i.e. used cartridge from the spot, is not found to be proved. Neither complainant Yogendra (PW-7) nor Dilip Singh (PW-2) have deposed that any used cartridge was lying at the spot after the incident. The Investigating Officer Animesh Dwivedi (PW-17) has stated that the cartridge was seized by him on 1.10.2008 from the spot shown by Dilip Singh (PW-2); but, as mentioned earlier, that Dilip Singh has not stated that on his presence any cartridge was recovered from the spot. Apart from it, Animesh Dwivedi (PW-17) has neither identified the seized cartridge before the Court nor stated that the cartridge Article (EC-1) was the same cartridge which was found at the spot. In the aforesaid circumstances, it is deemed that cartridge Article (EC-1) was fired by the pistol Article (A-1) which has been recovered on the information of the appellant. It cannot be inferred that the appellant committed robbery with the complainant Yogendra and caused him gun shot injury.

6. In this case, nobody has identified the appellant as a culprit to the incident and no stolen property has been seized. Only on the basis of the aforesaid circumstances which were not found to be proved, appellant has been convicted for the charges punishable under Section 394/397 of the IPC, Section 11/13 and

13(K)/11 of the M.P. Dakaiti & Vyapaharan Kshetra Adhiniyam, 1981 which does not appear to be just and proper. As the aforesaid offences are not proved beyond the reasonable doubt by the prosecution in the aforesaid circumstances, the conviction and sentence of the appellant deserves to be set aside.

7. On perusal of the record, it is also found that at the instance of the appellant, pistol Article A-1 and two live cartridge Article-B have been seized and for the possession of these articles he has no licence and the aforesaid fact has been proved by the prosecution by the statement of Animesh Dwivedi the Investigation Officer (PW-17), Sub Inspector Ajay Singh (PW-14), Sainik Rakesh Kumar (PW-9), Sainik Bhagat (PW-13) and the arrest memo Ex.P/13 and information memorandum Ex-P/9 and the seizure memo Ex P/7 and according to FSL report Ex.P/17, pistol Article-A and cartridge Article-B were in working condition and the aforesaid evidence are believable. Nothing is found on record to discard the same, therefore, it is found that the prosecution has proved beyond the reasonable doubt that the appellant was having fire arm pistol Article -A and cartridge Article-B in his possession.

8. In this Case the District Magistrate, Satna has also given sanction for prosecution sentence under Section 39 of the Arms Act. This order is Ex-P/6 which has been proved by the statement of Jugal Kishore PW-6 who has stated that the order Ex P/6 has the signature of the District Magistrate, Sukveer Singh, as then he was posted.

9. Thus, from the record it is found to be proved that the appellant has committed offence punishable under Section 25-A of the Arms Act. However, against him no formal charge has been framed for the aforesaid offence. But it appears that he was well aware of the facts of the offences and evidence was led against him. Therefore, even in the absence of charge he has not found to be prejudiced. Therefore, even with the aforesaid irregularity he will be convicted and sentenced for the aforesaid offence.

10. In view of the aforesaid discussion, the judgment of conviction and order of sentence passed by the trial Court for the offence under section 394 of the I.P.C., Section 394/397 of the IPC read with Section 11/13 and Section 13A & 11 of the M.P. Dakaiti & Vyapaharan Prabhavit Kshetra Adhiniyam, 1981 are hereby set aside.

11. However, the appellant is convicted for the offence under Section 25-A(i) of the Arms Act and sentenced to R.I. for 2 years. In this case, the appellant is in custody since 2.8.2011, hence he has already undergone the aforesaid term of imprisonment. Therefore, any modification or change in the sentence would have no meaning. Therefore, the sentence is also affirmed and it is directed that if the appellant's custody is not required in any other offence, he be released forthwith. A copy of this order be sent to the trial court for information and compliance.